IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 893 OF 2004

IN

SUM. SUIT NO. 1602 OF 2004

M/s. Plastika Enterprise. .. Plaintiff.

vs.

Cactus Imaging India Ltd., .. Defendant.

Mr. S.P. Kanuga for plaintiff.

Mr. G.R. Kinkhabwala a/w Sameer Samant

i/by Mulla & Mulla for defendant.

CORAM : S.U. KAMDAR, J.

DATE : 4th October, 2005.

P.C.:

. The present suit is filed for recovery of a sum of Rs.7,71,465.35 with further interest at the rate of 24% on Rs.6,04,377.90. The claim arises in respect of the goods sold and delivered evidenced by invoice at Exhibit A and challan at Exhibit B. I so far as the delivery of the goods is concerned, there is no dispute in as much as by a letter dated 22.2.2003 being Exhibit A to the rejoinder the defendant has admitted taking delivery of the goods

from Namaskar Roadways (P) Ltd., in respect of the said invoice. The defendant has raised two fold defence. Firstly it has been contended that since the defendants are carrying on business at Chennai and no part of cause of action has arisen within the jurisdiction of this Court this Court has no jurisdiction to entertain and try the present suit. I find no merit in the aforesaid contention. Admittedly, the plaintiffs are at Bombay. The goods are sold and delivered from Bombay. The payment is payable at Bombay. In that view of the matter, this Court has jurisdiction. Furthermore, invoices are also subject to Mumbai jurisdiction and in that view of the matter, I am of the opinion that parties have by their choice have chosen only Courts at Mumbai shall have jurisdiction. Thus I reject the aforesaid contention of the learned counsel for the defendants that this Court has no jurisdiction. The next contention is that the defendant has not placed any purchase order and that the goods were not ordered and ought not to have been sold to the defendants herein. He contends that the goods which are received are destroyed by the defendants. I find no merit in the contention. The said contention is so baseless that it has to be merely stated to be rejected. He also relied upon the judgment of the Apex Court in the case of M/s. Mechalee Engineers & Manufacturers vs. M/s. Basic Equipment Corporation, reported in AIR 1977 SC 577.

I am of the opinion that the principles set out therein are well settled and are to be applied on the facts of each case. In that view of the matter, I pass a decree in favour of the plaintiff and against the defendant for the sum of Rs. 7,71,465.35 with further interest from the date of the suit till payment and/or realisation at the rate of 12% per annum. Summons for judgment is made absolute. Suit is decreed. No order as to costs.